



6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN: 3064-AE33

Large Bank Deposit Insurance Determination Modernization

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The FDIC is seeking comment on whether certain insured depository institutions that have a large number of deposit accounts, such as more than two million accounts should be required to undertake actions to ensure that, if one of these banks were to fail, depositors would have access to their FDIC-insured funds in a timely manner (usually within one business day of failure). Specifically, the FDIC is seeking comment on whether these banks should be required to: (1) enhance their recordkeeping to maintain (and be able to provide the FDIC) substantially more accurate and complete data on each depositor's ownership interest by right and capacity (such as single or joint ownership) for all or a large subset of the bank's deposit accounts; and (2) develop and maintain the capability to calculate the insured and uninsured amounts for each depositor by deposit insurance capacity for all or a substantial subset of deposit accounts at the

end of any business day. This ANPR does not contemplate imposing these requirements on community banks.

DATES: Comments must be received by the FDIC no later than [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on the advance notice of proposed rulemaking using any of the following methods:

- *Agency Web Site:* <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments on the agency website.

- *E-mail:* comments@fdic.gov. Include RIN 3064-AE33 on the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

- *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to <http://www.fdic.gov/regulations/laws/federal/>.

FOR FURTHER INFORMATION CONTACT: Marc Steckel, Deputy Director, Division of Resolutions and Receiverships, 571-858-8224; Teresa J. Franks, Assistant Director, Division of

Resolutions and Receiverships, 571-858-8226; Christopher L. Hencke, Counsel, Legal Division, 202-898-8839; Karen L. Main, Counsel, Legal Division, 703-562-2079.

SUPPLEMENTARY INFORMATION:

I. Deposit Insurance

Under section 11 of the Federal Deposit Insurance Act (“FDI Act”), the FDIC is responsible for paying deposit insurance “as soon as possible” following the failure of an insured depository institution.^{1,2} While the FDIC may pay insurance either in cash (a “payout”) or by making available to each depositor a “transferred deposit” in another insured depository institution (which could be a bridge bank),¹ in most cases the FDIC uses transferred deposits.

Although the statutory requirement that the FDIC pay insurance “as soon as possible”² does not obligate the FDIC to pay insurance within a specific period of days or weeks, the FDIC strives to pay insurance promptly. Indeed, the FDIC strives to make most insured deposits available to depositors by the next business day after a bank fails (usually the Monday following a Friday failure). For several reasons, the FDIC believes that prompt payment of deposit insurance is essential. First, prompt payment of deposit insurance maintains public confidence in the FDIC guarantee as well as confidence in the banking system. Second, depositors must have prompt access to their insured funds in order to meet their financial needs and obligations. Third, a delay in the payment of deposit insurance – especially in the case of the failure of one of the largest insured depository institutions – could have systemic consequences and harm the national

¹ As used in this ANPR, the term “bank” is synonymous with “insured depository institution.”

² 12 U.S.C. 1821(f)(1).

¹ *Id.*

² *Id.*

economy. Fourth, a delay could reduce the franchise value of the failed bank and thus increase the FDIC's resolution costs.³

Under section 11 of the FDI Act, the FDIC pays insurance up to the “standard maximum deposit insurance amount” or “SMDIA” of \$250,000.⁴ In applying the SMDIA, the law requires the FDIC to aggregate the amounts of all deposits in the insured depository institution that are maintained by a depositor “in the same capacity and the same right.”⁵ For example, before the \$250,000 limit is applied, all single ownership accounts owned by a particular depositor must be aggregated. Such accounts, however, are insured separately from joint ownership accounts because joint ownership represents a separate “capacity and right.”

In accordance with section 11, the FDIC has recognized a number of ownership “capacities” or account categories. Some of the most common account categories are the following: (1) single ownership accounts; (2) joint ownership accounts; (3) certain retirement accounts; and (4) revocable trust accounts (informal “payable-on-death” accounts as well as formal “living trust” accounts).⁶ Appendix A contains a list of deposit insurance account categories.

While the FDIC is authorized to rely upon the account records of the failed insured depository institution to identify owners and insurance categories,⁷ the failed bank's records are often ambiguous or incomplete. For example, the FDIC might discover multiple accounts under one name but at different addresses. Conversely, the FDIC might discover accounts under different names but at the same address. In such circumstances, the FDIC is faced with making a

³ See 70 FR 73652, 73653-54 (December 13, 2005).

⁴ 12 U.S.C. 1821(a)(1)(E).

⁵ 12 U.S.C. 1821(a)(1)(C).

⁶ See 12 CFR 330.6 (governing the coverage of single ownership accounts); 12 CFR 330.9 (joint ownership accounts); 12 CFR 330.14(b)(2) (retirement accounts); 12 CFR 330.10 (revocable trust accounts).

⁷ See 12 U.S.C. 1822(c); 12 CFR 330.5.

potentially erroneous overpayment or delaying the payment of insured amounts to depositors while it manually reviews files and obtains additional information from the account holders about the ownership of the accounts.

The problem identifying the owners of deposits is exacerbated when an account at a failed bank has been opened through a deposit broker or other agent or custodian. In this scenario, neither the name nor the address of the owner may appear in the failed bank's records. The only party identified in the records might be the custodian. The FDIC is faced with decision to overpay erroneously deposit insurance or to delay payment to insured depositors until information is obtained from the custodian as to the actual owners and their respective interests.⁸

In some cases, even when the owner of a particular account is clearly disclosed in the failed bank's account records, the FDIC may be required to obtain additional information before applying the \$250,000 limit. For example, in the case of revocable trust accounts, the account owner's coverage depends upon the number of testamentary beneficiaries (the coverage generally is \$250,000 times the number of beneficiaries).⁹ Generally, when an account is an informal "pay-on-death" or "POD" account, the identities of the beneficiaries are contained in the bank's records, but are not electronically stored in a structured way using standardized formatting. When an account has been opened in the name of a formal revocable "living trust," the beneficiaries typically are not contained in the bank's records at all. As a result, if the balance of the account exceeds \$250,000, the FDIC is faced with the decision to overpay

⁸ In the case of accounts held by agents or custodians, the FDIC provides "pass-through" insurance coverage (meaning that the coverage "passes through" the agent or custodian to each of the actual owners). *See* 12 CFR 330.7. The FDIC cannot apply the \$250,000 limit on a "pass-through" basis, however, until the FDIC has obtained records from the custodian as to the identities and interests of the actual owners. *See* 12 CFR 330.5.

⁹ *See* 12 CFR 330.10.

erroneously deposit insurance or delay payment to insured depositors until the account owner provides the FDIC with a copy of the trust agreement (or otherwise provides the FDIC with information about the account beneficiaries). To complicate the insurance determination further, bank records on trust accounts are often in paper form, microfiche, or electronically scanned images that the FDIC must manually review, since these records cannot be processed electronically. This manual review is time consuming. As with brokered or other custodial deposits, the number of such trust accounts could be quite large at certain institutions.

II. Section 360.9 – Large Bank Deposit Insurance Determination Modernization

The FDIC previously attempted to enhance its ability to make prompt deposit insurance determinations at larger insured depository institutions through the adoption of § 360.9 of its regulations.¹⁰ Effective August 18, 2008,¹¹ § 360.9 requires insured institutions covered by its requirements to maintain processes that would provide the FDIC with standard deposit account information promptly in the event of the institution’s failure. In addition, § 360.9 requires these institutions to maintain the technological capability to automatically place and release holds on deposit accounts. If certain banks with a large number of deposit accounts were to fail with little prior warning, however, additional measures are likely to be needed to ensure the rapid application of deposit insurance limits to all deposit accounts.

Section 360.9 applies to “covered institutions,” with the term “covered institution” defined as an insured depository institution with at least \$2 billion in domestic deposits and at least (1) 250,000

¹⁰ 12 CFR 360.9.

¹¹ See 73 FR 41180 (July 17, 2008).

deposit accounts; or (2) \$20 billion in total assets.¹² Section 360.9 requires a covered institution to have in place an automated process for placing and removing holds on deposit accounts and certain other types of accounts concurrent with or immediately following the daily deposit account processing on the day of failure.

Under § 360.9, a covered institution is also required to be able to produce upon request data files that use a standard data format populated by mapping preexisting data elements regarding deposit accounts.¹³ For accounts in most of the deposit insurance categories recognized by the FDIC, the required information includes the deposit insurance category.¹⁴ The required information also includes the customer's name and address.¹⁵ At failure (or before), § 360.9 contemplates that the covered institution would transmit its § 360.9 data to the FDIC so that the FDIC could determine specifically which amounts were insured and which were not. In general, the determination would not be made on closing night, and, for many accounts, would not be made on closing weekend.

The self-described purpose of § 360.9 is the following: “This section is intended to allow the deposit and other operations of a large insured depository institution (defined as a ‘Covered Institution’) to continue functioning on the day following failure. It also is intended to permit the FDIC to fulfill its legal mandates regarding the resolution of failed insured institutions[,] to provide liquidity to depositors promptly, enhance market discipline, ensure equitable treatment

¹² 12 CFR 360.9(b)(1).

¹³ 12 CFR 360.9(d).

¹⁴ 12 CFR 360.9, appendix C.

¹⁵ 12 CFR 360.9, appendix F.

of depositors at different institutions and reduce the FDIC's costs by preserving the franchise value of a failed institution.”¹⁶

III. The Need for Additional Rulemaking

The lessons of the financial crisis, which peaked in the months following the promulgation of the FDIC's Final Rule prescribing § 360.9, illustrate definitively that further changes are needed to ensure that the FDIC can maintain the public trust in the banking system and can fulfill its statutory obligation to make insured depositors whole “as soon as possible.”

A significant change to the banking industry resulting from the financial crisis affecting FDIC deposit insurance determinations arises out of further consolidation of the industry, particularly for larger firms. In 2005 the FDIC noted:

Industry consolidation raises practical concerns about the FDIC's current business model for conducting a deposit insurance determination. Larger institutions—especially those initiating recent merger activity—are considerably more complex, have more deposit accounts, greater geographic dispersion, more diversity of systems and data consistency issues arising from mergers than has been the case historically.... Should such trends continue, deposits will become even more concentrated in the foreseeable future.¹⁷

Such trends have not only continued, they accelerated as a result of the crisis, as reflected in Table A.

Table A

Deposit Account Concentrations

¹⁶ 12 CFR 360.9(a).

¹⁷ Advance Notice of Proposed Rulemaking, 70 FR 73652, 76354 (December 13, 2005).

	June 2008	December 2014	Percent Increase
Largest number of deposit accounts at a single bank	59,604,549	84,491,835	42%
Number of deposit accounts at the 10 banks having the most deposit accounts	254,180,422	318,809,420	25%

As a result of this concentration, many institutions are more complex with more serious systems and data consistency challenges.

The financial crisis also reinforced the challenges posed by multiple and rapid resolution of banks. Since the beginning of 2008, 511 insured depository institutions failed, comprising a total asset value of approximately \$696 billion. These failed banks range in asset value from a few million to over \$300 billion. Still other firms, including some of the largest banking organizations, were spared from failure only by extraordinary government intervention. These experiences indicate to the FDIC that the provisional account holds and other requirements finalized in § 360.9 are not sufficient to mitigate the complexities of large institution failures. Further measures are required. This is especially true because the experience of the financial crisis indicates that failures can often happen with no or little notice and time for the FDIC to prepare. Since 2009, the FDIC has been called upon to resolve 47 institutions within 30 days from the launch of the resolution process to the ultimate closure of the bank. In addition to these rapid failures, the financial condition of two banks with a large number of accounts - Washington Mutual Bank and Wachovia Bank - deteriorated very quickly in 2008, leaving the FDIC little time to prepare.

The implementation of § 360.9 requirements by covered firms also underscores the need for further measures. The FDIC has worked with covered institutions for several years to implement § 360.9. Based on its experience reviewing banks' deposit data, deposit systems and

mechanisms for imposing provisional holds, staff has concluded that § 360.9 has not been as effective as had been hoped in enhancing the capacity to make prompt deposit insurance determinations. For the reasons discussed below, the FDIC has concluded, that, if certain banks with a large number of accounts were to fail with little prior notice and an insurance determination were required, additional measures would be needed, beyond those set out in § 360.9, to provide assurance that a deposit insurance determination would be made promptly and accurately. Because delays in insurance determinations could lead to bank runs or other systemic problems, the FDIC believes that improved strategies must be implemented to ensure prompt deposit insurance determinations at failures of banks with a large number of deposit accounts.

First, in reviewing covered institutions for compliance with § 360.9 requirements, the FDIC has often found inconsistent and missing data.

Second, the continued growth following the promulgation of § 360.9 in the number of deposit accounts at larger banks and the number and complexity of deposit systems (or platforms) in many of these banks would exacerbate the difficulties at making prompt deposit insurance determinations.

Third, using the FDIC's information technology systems to make deposit insurance determinations at a failed bank with a large number of deposit accounts would require the transmission of massive amounts of deposit data from the bank's systems (now held by the bank's successor) to the FDIC's systems. The FDIC would have to process this data. The time required to transmit and process such a large amount of data present a challenge in making an insurance determination on the night of closing ("closing night") or possibly even on closing

weekend, if the bank was closed on a Friday. A failed bank that has multiple deposit systems would further complicate the aggregation of deposits owned by a particular depositor in a particular right and capacity, causing additional delay.

Finally, if a bank with a large number of deposit accounts were to fail suddenly because of liquidity problems, the FDIC's opportunity to prepare for the bank's closing would be limited, thus further exacerbating the challenge in making a prompt deposit insurance determination.¹⁸

IV. Possible Solution

The FDIC is seeking comment on what additional regulatory action should be taken to ensure that deposit insurance determinations can be made promptly when certain banks with a large number of deposit accounts, such as more than two million accounts, fail. The two million account threshold would affect about 37 banks as of December 31, 2014. In determining whether to initiate the rulemaking process, the FDIC will carefully consider all comments from the public, as well as any relevant data or information submitted by the public.

Based on the FDIC's experience, however, and as reflected in the discussion that follows, it seems likely that certain banks with a large number of deposit accounts (e.g., more than two million accounts) will have to: (1) enhance their recordkeeping to maintain substantially more accurate and complete data on each depositor's ownership interest by right and capacity (such as single or joint ownership) for all or a large subset of the bank's deposit accounts; and (2) develop and maintain the capability to calculate the insured and uninsured amounts for each depositor by deposit insurance category for all or a substantial subset of deposit accounts at the end of any

¹⁸ See 71 FR 74857, 74859 (December 13, 2006).

business day. This ANPR does not, however, contemplate imposing additional requirements on community banks.

The goal of any regulatory action would be to: (1) address the additional challenges in making deposit insurance determinations posed by certain banks with a large number of deposit accounts, which have only increased in magnitude following the financial crisis; (2) enhance capabilities to make prompt deposit insurance determinations in the event of the sudden failure of one of these banks; (3) safeguard the Deposit Insurance Fund by avoiding overpayment of deposit insurance and other potential consequences from the failure of a bank with a large number of accounts; and (4) ensure that public confidence is maintained and depositors' expectations of prompt payment of insured deposits are met.

If certain banks with a large number of deposit accounts were to fail and a deposit insurance determination were necessary, one possible process for making deposit insurance determinations (described here for purposes of soliciting comment) would be as follows. For a large subset of deposits ("closing night deposits"), including those where depositors have the greatest need for immediate access to funds (such as transaction accounts and money market deposit accounts ("MMDAs")), deposit insurance determinations would be made on closing night. The failed bank's information technology systems and data would be used to calculate insured and uninsured amounts. As discussed below, the FDIC seeks comment on the types of deposits that should be deemed "closing night deposits."

To make a deposit insurance determination on closing night would require that certain banks with a large number of deposit accounts:

1. Obtain and maintain data on all closing night deposits, including outstanding official items, that are sufficiently accurate and complete to allow the determination of the insured and uninsured amounts for each depositor by deposit insurance right and capacity (that is, by deposit insurance category) at the end of any business day (since failure can occur on any business day). To allow the FDIC to examine banks' data, banks with a large number of deposit accounts would have to maintain this data using a standard format and the data would have to meet quality and completeness standards; and
2. Develop and maintain an information technology system that can calculate the insured and uninsured amounts of closing night deposits for each depositor by deposit insurance category at the end of any business day.

Deposit insurance determinations on all other deposits ("post-closing deposits") would be made after closing night, either on closing weekend (if the bank fails and is closed on a Friday) or thereafter. The FDIC envisions that, as currently contemplated by § 360.9, the failed bank's information technology and deposit systems would be used to place provisional holds on post-closing deposits on closing night. The FDIC also envisions that the failed bank's information technology and deposit systems would be used to calculate the insured and uninsured amounts of post-closing deposits.

For this process to work, it would require that a bank with a large number of deposit accounts obtain and maintain data on all post-closing deposits that are sufficiently accurate and complete to allow a prompt determination of the insured and uninsured amounts for each depositor by deposit insurance category. Moreover, this data will likely have to be more accurate and complete than the data some of these banks maintain now and would have to be maintained using

a standard format. Alternatively, this information might be gathered post-failure using a claims administration process where depositors would be required to submit a proof of claim to the FDIC. As discussed below, the FDIC seeks comment on which types of deposits should be deemed post-closing deposits and on data requirements for various types of potential post-closing deposits.

The FDIC recognizes that the deposit insurance determination processes described above and the requirements they would impose could require banks with a large number of deposit accounts to make substantial changes to their recordkeeping and information systems. The complexity of the deposit insurance coverage rules contributes to the challenge of making deposit insurance determinations at these banks. As shown in Appendix A, there are more than a dozen different deposit insurance categories or “rights and capacities” in which a depositor can own funds in an FDIC-insured institution.

Simplifying deposit insurance coverage rules likely would enable the FDIC to perform deposit insurance determinations much more quickly and accurately but might also entail reduced insurance coverage to some affected depositors. For example, deposit insurance coverage for trust accounts is complex in part because it depends upon the number of beneficiaries, whose names often do not appear in bank records. Replacing “per beneficiary” coverage with “per grantor” or “per trust” coverage would greatly simplify the insurance determination but result in reduced insurance coverage.

V. Request for Comment

By describing the processes above for making deposit insurance determinations at certain banks with a large number of deposit accounts that fail and discussing the requirements these processes

would entail for these banks, the FDIC does not intend to preclude consideration of other possible solutions to the problem of making prompt deposit insurance determinations if one of these banks were to fail. On the contrary, the FDIC is interested in exploring all means that would result in prompt deposit insurance determinations. The FDIC invites comments on the processes described above and the requirements they would impose, as well as suggestions for and comment on other possible solutions.

The FDIC also requests comment on the questions set out below. In addition, the FDIC is requesting the opportunity to schedule meetings with interested parties during the development of a regulatory proposal. Any such meetings will be documented in the FDIC's public files to note the institution's or entity's general views on the ANPR or their answers to questions that have been posed in this ANPR. Any institution or organization that would like to request such a meeting to discuss the proposal in more detail and make suggestions or comments should contact Marc Steckel, Deputy Director, Division of Resolutions and Receiverships, 571-858-8224.

General Issues

Applicability

This ANPR presents potential options that, if adopted, would impose requirements only on certain banks with a large number of deposit accounts.

- In general, which banks should be subject to the requirements discussed in this ANPR?
- To what size banks, as measured by number of deposit accounts, should possible rulemaking apply? Should requirements be tiered based on these criteria?

- Should other factors or a combination of factors be used to determine which banks would be subject to the requirements?
- Should bank affiliates of certain banks with a large number of deposit accounts be subject to the requirements, regardless of their size or number of deposit accounts? Why or why not?

Challenges, costs and tradeoffs

- Which requirements would likely cause the most significant changes to banks' deposit operations and systems?
- What are the costs associated with the requirements; for example, what is the cost of—
 - Obtaining and maintaining data on all closing night deposits that is sufficiently accurate and complete to allow the determination of the insured and uninsured amounts for each depositor at the end of any business day;
 - Developing and maintaining an information technology system that, on closing night, can calculate the insured and uninsured amounts of closing night deposits for each depositor by deposit insurance category at the end of any business day;
 - Obtaining and maintaining more accurate and complete data on post-closing deposits; and
 - Disclosing and making available each customer's level of insured and uninsured deposits on a daily basis?

- Which requirements would be the most costly to implement? Why? Please provide estimates of the potential cost(s).
- Could the implementation and maintenance costs be mitigated while still meeting the FDIC's objective of timely deposit insurance determinations? Are there any adjustments to the processes and requirements discussed above that would reduce costs while still meeting the objectives? If so, please describe them.
- How could the current IT capabilities at banks with a large number of deposit accounts best be used to minimize the cost of the requirements?
- Are there related bank activities or regulatory requirements that would reduce the cost of implementation or would implementation of any requirements considered in this ANPR reduce the costs of implementing other rules? If so, what are the activities or requirements, and how might they be used to reduce costs? For example, could banks reduce regulatory costs by leveraging work on—
 - Liquidity measurement, which may require categorizing deposits so as to measure stressed outflows;
 - Stress testing, which may require analyzing and/or segmenting deposits to determine how they would behave during a period of stress;
 - Anti-money laundering requirements that may require frequent tracking of deposits; and

- Resolution planning for many insured depository institutions, which requires banks to develop credible resolution plans?
- Banks have operational schedules for synchronizing systems for reporting at month-end, quarter-end and year-end. How disruptive or expensive would off-period reporting be? How long would it take to develop the ability for off-period reporting?
- What is the current state of IT systems for tracking deposit accounts and customers at certain banks that have a large number of deposit accounts? Are the systems modern and effective? Are banks already planning upgrades for other reasons? Are there currently shortcomings in these systems that impede the ability to process transactions effectively, maintain data security and implement cross-product marketing strategies?

Benefits

- In light of the financial crisis, what are the potential benefits arising from reduced losses to the DIF and to public confidence and financial stability from systems upgrades that ensure the ability of certain banks with a large number of deposit accounts to make prompt deposit insurance determinations in the event of failure?
- Are there potential spillover benefits that would accrue from the proposed systems changes considered in this ANPR in terms of banks' ability to process transactions, maintain data security, and implement cross-product marketing strategies? Would the benefits of the changes considered in this ANPR accrue only to the public in the FDIC's ability to carry out a deposit insurance determination, or would there be spillover benefits for the banks themselves?

Timetable for implementation

The FDIC recognizes that banks with a large number of deposit accounts may need substantial time to implement the requirements described in this ANPR.

- How long should banks with a large number of deposit accounts be given to implement the requirements contemplated by this ANPR and why?
- Are there particular requirements that would take more time to implement? If so, which requirements would pose these delays? Why?
- If new requirements are adopted, should the FDIC set a single implementation date or phase in the requirements?

Providing depositors with the insured and uninsured amount of their deposits

- If a bank can readily determine the amount of FDIC-insured funds in a depositor's accounts, would it be beneficial to provide this information to the depositor? Should banks be required to provide this information to depositors?

Closing Night Deposits and Post-Closing Deposits

The discussion that follows focuses on when deposit insurance determinations should be made for various types of deposit accounts.

Savings and time accounts

At a minimum, to meet depositors' immediate liquidity needs, deposit insurance determinations would have to be made on transaction and MMDA accounts on closing night. One possibility

would focus on making deposit insurance determinations only for transaction and MMDA accounts on closing night, so that banks with a large number of deposit accounts would have to create the capacity to calculate insured and uninsured amounts and debit uninsured balances on closing night only for these types of accounts. Holds would be placed on other types of accounts. Shortly after failure, insurance determinations would be completed for these accounts, and the holds would be replaced with the appropriate debits and credits.

- Should this approach be used? Why or why not?
- How important is it to depositors to be able to have immediate or quick access to accounts other than transaction accounts and MMDAs? Does it depend on the size of the deposit? What are the potential costs associated with delays for these accounts?
- What problems or complications might arise if this approach were used?
- From a depositor's perspective, this approach would differ from the approach now used by the FDIC at smaller banks. At smaller banks, the insurance determination for all accounts (except those where more information is needed from a depositor) is completed over the weekend following a Friday night bank failure and depositors generally have access to their funds the next business day after the bank fails. How confusing would this be for depositors? What types of problems might this differing treatment introduce?

Pass-through coverage accounts

In the case of accounts held by agents or custodians, the FDIC provides “pass-through” insurance coverage (*i.e.*, coverage that “passes through” the agent or custodian to each of the

actual owners).¹⁹ This coverage is not available, however, unless certain conditions are satisfied. One of these conditions is that information about the actual owners must be held by either the insured depository institution or by the agent or custodian or other party.²⁰ In most cases, the agent or custodian holds the necessary information and the insured depository institution does not, thus making it impossible to determine deposit insurance coverage on closing night. The need to obtain information from the agents or custodians delays the calculation of deposit insurance by the FDIC, which may result in delayed payments of insured amounts or erroneous overpayment of insurance. At certain banks with a large number of deposit accounts and large numbers of pass-through accounts, potential delays or erroneous overpayments could be substantial. A few options to resolve this problem are described below.

Option 1: Require banks with a large number of deposit accounts to identify pass-through accounts, and place holds on these accounts as if the full balance were uninsured. If such a bank failed, brokers, agents and custodians would have to submit required information in a standard format within a certain time. The standard format could expedite deposit insurance determinations.

Option 2: A bank with a large number of deposit accounts would have to maintain up-to-date records sufficient to allow immediate or prompt insurance determinations either for all pass-through accounts or for certain types of pass-through accounts where depositors need access to their funds immediately.

¹⁹ See 12 CFR 330.7.

²⁰ See 12 CFR 330.5.

- In addition to brokered deposits that are reported on the Call Report, how many accounts with pass-through coverage do banks with a large number of deposit accounts have (numbers and dollars)?
- For what types of brokered, agent or custodial accounts at banks with a large number of deposit accounts would owners likely need immediate or near-immediate access to funds after failure?
- How difficult would it be for banks with a large number of deposit accounts to maintain current records on beneficial owners of pass-through accounts? Are there certain types of pass-through accounts where maintaining current records might be relatively easy or relatively difficult?
- In particular, do banks with a large number of deposit accounts maintain full and up-to-date information on the owners of brokered deposit accounts where the broker is an affiliate of the bank? If not, how difficult would it be for banks to maintain current records on beneficial owners of pass-through accounts where the broker is an affiliate of the bank?
- What would the challenges and costs be for agents and custodians to provide information to banks on each principal and beneficiary's interest and to update that information whenever it changes? How do these costs compare to the cost of providing the data in a standard format at closing?
- Which option for pass-through accounts should the FDIC adopt? Why? Is another option preferable? If so, please describe it.

Prepaid card accounts

The FDIC's rules for "pass-through" insurance coverage of accounts held by agents or custodians apply to all types of custodial accounts, including accounts held by prepaid card companies or similar companies. After collecting funds from cardholders (in exchange for the cards), the prepaid card company might place the cardholders' funds into a custodial account at an insured depository institution. Some cardholders might use these cards (and the funds in the custodial account) as a substitute for a checking account. In the event of the failure of the insured depository institution, the cardholders will likely need immediate access to the funds in the custodial account to meet their basic financial needs and obligations.

- To prevent delays in the payment or erroneous insurance overpayments, should the FDIC impose recordkeeping or other requirements on banks with a large number of deposit accounts that would enable a prompt determination of the extent of deposit insurance coverage for prepaid cards, possibly on closing night?
- How difficult would it be for banks with a large number of deposit accounts to maintain current records on each prepaid cardholder's ownership interest?

How difficult would it be for prepaid card issuers to regularly provide current information on each cardholder's ownership interest to banks with a large number of deposit accounts?

Trust accounts

In the case of revocable and irrevocable trust accounts, the FDIC provides “per beneficiary” insurance coverage subject to certain conditions and limitations.²¹ For informal trusts (payable-on-death accounts), the bank may have either structured or unstructured information about beneficiaries. In many cases, however, the FDIC cannot calculate “per beneficiary” coverage until it obtains a copy of the trust agreement (with information about the number of beneficiaries and the respective interests of the beneficiaries) from the depositor. The need to obtain and review the trust agreement delays the FDIC’s calculation of insurance and may result in delay of insurance payments or overpayment of insurance amounts. Delays or erroneous overpayments may also occur even if the bank has the information for the informal trusts, but the information is not contained in its § 360.9 data. Two potential options for solving these problems are discussed below. These options are similar to the options discussed above for pass-through accounts.

Option 1: A bank with a large number of deposit accounts would have to maintain standardized data on trust accounts to ensure that insured depositors can be paid promptly at failure. These banks would have to collect and maintain relevant information about beneficiaries.

Option 2: Require that banks with a large number of deposit accounts maintain complete information under § 360.9 to identify trust accounts and their owners (but not necessarily beneficiaries). If such a bank failed, preliminary insured and uninsured amounts would be calculated based on the assumption that there is one qualified beneficiary for each trust. Owners of potentially uninsured trust accounts would have to submit required

²¹ See 12 CFR 330.10; 12 CFR 330.13.

information in a standard format within a certain time to receive greater coverage for multiple beneficiaries.

- How many trust accounts do banks with a large number of deposit accounts have (numbers and dollar amounts)?
- How many trust accounts are transaction accounts that depositors will likely need access to immediately after failure? Would providing access to up to \$250,000 immediately after failure be sufficient (with additional insured funds being provided later, when the insurance determination is completed)?
- What challenges would trust account holders face if they had to submit information in a standard format to gain the full benefits of insurance coverage beyond \$250,000 per grantor? Would the associated costs exceed the cost of the alternative, which could entail potentially lengthy delays in gaining the additional insurance coverage?
- How difficult would it be for banks with a large number of deposit accounts to maintain current records on each beneficiary's ownership interest? How much information do banks already collect and retain on beneficiaries?
- How difficult would it be for trustees to supply the information to banks and keep it current?
- Under the two options for trust accounts described above, trust account holders would be treated differently at banks with a large number of deposit accounts compared to other banks, since neither option is required at any bank now. What problems might that cause?

- Which option should the FDIC adopt? Why? Is another option preferable?
- In conjunction with considering how trust accounts should be treated on and post-closing night, how should the FDIC revise the rules for the coverage of trust accounts?

Special deposit insurance categories created by statute

Special statutory rules apply to the insurance coverage of certain types of accounts, including retirement accounts,²² employee benefit plan accounts²³ and government accounts.²⁴ In some cases, the FDIC cannot apply these special statutory rules without obtaining information from the depositor, which delays the calculation and payment of deposit insurance. Though the FDIC cannot change these special statutory rules, the FDIC could pursue options that are similar to those discussed in the previous section for pass-through accounts.

- How many of these accounts do banks with a large number of deposit accounts have (numbers and dollar amounts)?
- How urgently do depositors need immediate or near-immediate access to these types of funds after failure?
- These accounts often have characteristics similar to accounts with pass-through coverage. Can banks with a large number of deposit accounts reliably distinguish these special statutory accounts from accounts with pass-through insurance coverage?

²² See 12 U.S.C. 1821(a)(3).

²³ See 12 U.S.C. 1821(a)(1)(D).

²⁴ See 12 U.S.C. 1821(a)(2).

- How difficult would it be for banks with a large number of deposit accounts to maintain full and up-to-date information on the owners of these accounts? How difficult would it be for depositors to supply the information and keep it current? Are there certain types of accounts where maintaining current records might be relatively easy or relatively difficult?
- Should the FDIC apply any of the options for pass-through accounts (described above) to these accounts? If so, which one? Why? Is another option preferable?

Appendix A

Deposit Insurance Categories

The following is a list of the various deposit insurance categories with references to the FDIC's regulations or to statute. Several of the categories have a statutory basis, but only the reference to the FDIC's implementing regulation is given.

1. Revocable trust accounts. (12 CFR 330.10.)
2. Irrevocable trust accounts. (12 CFR 330.13.)
3. Joint accounts. (12 CFR 330.9.)
4. Employee benefit accounts. (12 CFR 330.14.)
5. Public unit accounts. (12 CFR 330.15.)
6. Mortgage escrow accounts for principal and interest payments. (12 CFR 330.7(d).)
7. Business organizations. (12 CFR 330.11.)
8. Single accounts. (12 CFR 330.6.)
9. Public bonds accounts. (12 CFR 330.15(c).)
10. Irrevocable trust account with an insured depository institution as trustee. (12 CFR 330.12.)
11. Annuity contract accounts. (12 CFR 330.8.)

12. Custodian accounts for American Indians. (12 CFR 330.7(e).)

13. Accounts of an insured depository institution pursuant to the bank deposit financial assistance program of the Department of Energy. (12 U.S.C . 1817 (i)(3).)

14. Certain retirement accounts. (12 CFR 330.14 (b) and (c).)

Pass-through insurance (12 CFR 330.5 and 330.7) is not a deposit insurance category, but can be applied to the categories listed above.

By order of the Board of Directors.

Dated at Washington, D.C., this 21st day of April, 2015.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman

Executive Secretary

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